

By the Committee on Finance and Taxation; and Senator Carlton

314-1753A-01

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 213.053, F.S.; providing an exemption from
 4 public records requirements for information
 5 contained in specified documents received by
 6 the Department of Revenue in connection with
 7 ch. 202, F.S., the Communications Services Tax
 8 Simplification Law; authorizing the department
 9 to provide certain information relative to said
 10 chapter to local governments imposing a local
 11 communications services tax; providing for
 12 application of confidentiality and penalty
 13 provisions to such local governments; providing
 14 for future review and repeal; providing a
 15 finding of public necessity; providing a
 16 contingent effective date.

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 18 Be It Enacted by the Legislature of the State of Florida:

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 20 Section 1. Section 213.053, Florida Statutes, is
 21 amended to read:
 22 213.053 Confidentiality and information sharing.--
 23 (1)(a) The provisions of this section apply to s.
 24 125.0104, county government; s. 125.0108, tourist impact tax;
 25 chapter 175, municipal firefighters' pension trust funds;
 26 chapter 185, municipal police officers' retirement trust
 27 funds; chapter 198, estate taxes; chapter 199, intangible
 28 personal property taxes; chapter 201, excise tax on documents;
 29 chapter 203, gross receipts taxes; chapter 211, tax on
 30 severance and production of minerals; chapter 212, tax on
 31 sales, use, and other transactions; chapter 220, income tax

1 code; chapter 221, emergency excise tax; s. 252.372, emergency
2 management, preparedness, and assistance surcharge; s.
3 370.07(3), Apalachicola Bay oyster surcharge; chapter 376,
4 pollutant spill prevention and control; s. 403.718, waste tire
5 fees; s. 403.7185, lead-acid battery fees; s. 538.09,
6 registration of secondhand dealers; s. 538.25, registration of
7 secondary metals recyclers; ss. 624.501 and 624.509-624.515,
8 insurance code; s. 681.117, motor vehicle warranty
9 enforcement; and s. 896.102, reports of financial transactions
10 in trade or business.

11 (b) The provisions of this section also apply to
12 chapter 202, the Communications Services Tax Simplification
13 Law. This paragraph is subject to the Open Government Sunset
14 Review Act of 1995 in accordance with s. 119.15, and shall
15 stand repealed on October 2, 2006, unless reviewed and saved
16 from repeal through reenactment by the Legislature.

17 (2) Except as provided in subsections (3), (4), (5),
18 (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16),
19 and (17), all information contained in returns, reports,
20 accounts, or declarations received by the department,
21 including investigative reports and information and including
22 letters of technical advice, is confidential except for
23 official purposes and is exempt from the provisions of s.
24 119.07(1). Any officer or employee, or former officer or
25 employee, of the department who divulges any such information
26 in any manner, except for such official purposes, commits a
27 misdemeanor of the first degree, punishable as provided in s.
28 775.082 or s. 775.083.

29 (3) The department shall permit a taxpayer, his or her
30 authorized representative, or the personal representative of
31 an estate to inspect the taxpayer's return and may furnish him

1 or her an abstract of such return. A taxpayer may authorize
2 the department in writing to divulge specific information
3 concerning the taxpayer's account.

4 (4) Nothing contained in this section shall prevent
5 the department from publishing statistics so classified as to
6 prevent the identification of particular accounts, reports,
7 declarations, or returns or prevent the department from
8 disclosing to the Comptroller the names and addresses of those
9 taxpayers who have claimed an exemption pursuant to s.
10 199.185(1)(i) or a deduction pursuant to s. 220.63(5).

11 (5) The department may make available to the Secretary
12 of the Treasury of the United States or his or her delegate,
13 the Commissioner of Internal Revenue of the United States or
14 his or her delegate, the Secretary of the Department of the
15 Interior of the United States or his or her delegate, or the
16 proper officer of any state or his or her delegate,
17 exclusively for official purposes, information to comply with
18 any formal agreement for the mutual exchange of state
19 information with the Internal Revenue Service of the United
20 States, the Department of the Interior of the United States,
21 or any state.

22 (6) Any information received by the Department of
23 Revenue in connection with the administration of taxes,
24 including, but not limited to, information contained in
25 returns, reports, accounts, or declarations filed by persons
26 subject to tax, shall be made available by the department to
27 the Auditor General or his or her authorized agent, the
28 Comptroller or his or her authorized agent, the Insurance
29 Commissioner or his or her authorized agent, the Treasurer or
30 his or her authorized agent, or a property appraiser or tax
31 collector or their authorized agents pursuant to s.

1 195.084(1), in the performance of their official duties, or to
2 designated employees of the Department of Education solely for
3 determination of each school district's price level index
4 pursuant to s. 236.081(2); however, no information shall be
5 disclosed to the Auditor General or his or her authorized
6 agent, the Comptroller or his or her authorized agent, the
7 Insurance Commissioner or his or her authorized agent, the
8 Treasurer or his or her authorized agent, or to a property
9 appraiser or tax collector or their authorized agents, or to
10 designated employees of the Department of Education if such
11 disclosure is prohibited by federal law. The Auditor General
12 or his or her authorized agent, the Comptroller or his or her
13 authorized agent, the Treasurer or his or her authorized
14 agent, and the property appraiser or tax collector and their
15 authorized agents, or designated employees of the Department
16 of Education shall be subject to the same requirements of
17 confidentiality and the same penalties for violation of the
18 requirements as the department. For the purpose of this
19 subsection, "designated employees of the Department of
20 Education" means only those employees directly responsible for
21 calculation of price level indices pursuant to s. 236.081(2).
22 It does not include the supervisors of such employees or any
23 other employees or elected officials within the Department of
24 Education.

25 (7) Notwithstanding any other provision of this
26 section, the department may provide:

27 (a) Information relative to chapter 211, chapter 376,
28 or chapter 377 to the proper state agency in the conduct of
29 its official duties.

30 (b) Names, addresses, and dates of commencement of
31 business activities of corporations to the Division of

1 Corporations of the Department of State in the conduct of its
2 official duties.

3 (c) Information relative to chapter 212 and chapters
4 561 through 568 to the Division of Alcoholic Beverages and
5 Tobacco of the Department of Business and Professional
6 Regulation in the conduct of its official duties.

7 (d) Names, addresses, and sales tax registration
8 information to the Division of Hotels and Restaurants of the
9 Department of Business and Professional Regulation in the
10 conduct of its official duties.

11 (e) Names, addresses, taxpayer identification numbers,
12 and outstanding tax liabilities to the Department of the
13 Lottery and the Department of Banking and Finance in the
14 conduct of their official duties.

15 (f) State tax information to the Nexus Program of the
16 Multistate Tax Commission pursuant to any formal agreement for
17 the exchange of mutual information between the department and
18 the commission.

19 (g) Tax information to principals, and their
20 designees, of the Revenue Estimating Conference for the
21 purpose of developing official revenue estimates.

22 (h) Names and addresses of persons paying taxes
23 pursuant to part IV of chapter 206 to the Department of
24 Environmental Protection in the conduct of its official
25 duties.

26 (i) Information relative to chapters 212 and 326 to
27 the Division of Florida Land Sales, Condominiums, and Mobile
28 Homes of the Department of Business and Professional
29 Regulation in the conduct of its official duties.

30 (j) Information authorized pursuant to s. 213.0535 to
31 eligible participants and certified public accountants for

1 such participants in the Registration Information Sharing and
2 Exchange Program.

3 (k) Payment information relative to chapters 199, 201,
4 212, 220, and 221 to the Office of Tourism, Trade, and
5 Economic Development in its administration of the tax refund
6 program for qualified defense contractors authorized by s.
7 288.1045 and the tax refund program for qualified target
8 industry businesses authorized by s. 288.106.

9 (l) Information relative to chapter 212 to the Office
10 of Agriculture Law Enforcement of the Department of
11 Agriculture and Consumer Services in the conduct of the Bill
12 of Lading Program. This information is limited to the business
13 name and whether the business is in compliance with chapter
14 212.

15 (m) Information relative to chapter 198 to the Agency
16 for Health Care Administration in the conduct of its official
17 business relating to ss. 409.901-409.910.

18 (n) Information contained in returns, reports,
19 accounts, or declarations to the Board of Accountancy in
20 connection with a disciplinary proceeding conducted pursuant
21 to chapter 473 when related to a certified public accountant
22 participating in the certified audits project, or to the court
23 in connection with a civil proceeding brought by the
24 department relating to a claim for recovery of taxes due to
25 negligence on the part of a certified public accountant
26 participating in the certified audits project. In any
27 judicial proceeding brought by the department, upon motion for
28 protective order, the court shall limit disclosure of tax
29 information when necessary to effectuate the purposes of this
30 section. This paragraph is repealed on July 1, 2002.

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1 (o) Information relative to ss. 376.70 and 376.75 to
2 the Department of Environmental Protection in the conduct of
3 its official business and to the facility owner, facility
4 operator, and real property owners as defined in s. 376.301.

5 (p) Information relative to ss. 199.1055, 220.1845,
6 and 376.30781 to the Department of Environmental Protection in
7 the conduct of its official business.

8 (q) Names, addresses, and sales tax registration
9 information to the Division of Consumer Services of the
10 Department of Agriculture and Consumer Services in the conduct
11 of its official duties.

12 (r) Information relative to the returns required by
13 ss. 175.111 and 185.09 to the Department of Management
14 Services in the conduct of its official duties. The Department
15 of Management Services is, in turn, authorized to disclose
16 payment information to a governmental agency as necessary in
17 the administration of chapters 175 and 185.

18 (s) Names, addresses, and federal employer
19 identification numbers, or similar identifiers, to the
20 Department of Highway Safety and Motor Vehicles for use in the
21 conduct of its official duties.

22 (t) Information relative to the tax exemptions under
23 ss. 212.031, 212.06, and 212.08 for those persons qualified
24 under s. 288.1258 to the Office of the Film Commissioner. The
25 Department of Revenue shall provide the Office of the Film
26 Commissioner with information in the aggregate.

27 (u) Information relative to chapter 202 to each local
28 government that imposes a tax pursuant to s. 202.19 in the
29 conduct of its official duties as specified in chapter 202.
30 Information provided under this paragraph may include, but is
31 not limited to, any reports required pursuant to s. 202.231,

1 audit files, notices of intent to audit, tax returns, and
2 other confidential tax information in the department's
3 possession relating to chapter 202. A person or an entity
4 designated by the local government in writing to the
5 department as requiring access to confidential taxpayer
6 information shall have reasonable access to information
7 provided pursuant to this paragraph. Such person or entity
8 may disclose such information to other persons or entities
9 with direct responsibility for budget preparation, auditing,
10 revenue or financial administration, or legal counsel. Such
11 information shall only be used for purposes related to budget
12 preparation, auditing, and revenue and financial
13 administration. Any information furnished to a local
14 government, or to any person or entity designated by the local
15 government as authorized by this paragraph, that is exempt
16 from the provisions of s. 119.07(1) and s. 24(a), Art. I of
17 the State Constitution pursuant to this section shall continue
18 to be exempt when so provided, and may not be further
19 disclosed except as provided by this paragraph.

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21 Disclosure of information under this subsection shall be
22 pursuant to a written agreement between the executive director
23 and the agency. Such agencies, governmental or
24 nongovernmental, shall be bound by the same requirements of
25 confidentiality as the Department of Revenue. Breach of
26 confidentiality is a misdemeanor of the first degree,
27 punishable as provided by s. 775.082 or s. 775.083.

28 (8) The Department of Revenue shall provide returns,
29 reports, accounts, or declarations received by the department,
30 including investigative reports and information, or
31 information contained in such documents, pursuant to an order

1 of a judge of a court of competent jurisdiction or pursuant to
2 a subpoena duces tecum only when the subpoena is:

3 (a) Issued by a state attorney, a United States
4 attorney, or a court in a criminal investigation or a criminal
5 judicial proceeding;

6 (b) Issued by a state or federal grand jury; or

7 (c) Issued by a state attorney, the Department of
8 Legal Affairs, the State Fire Marshal, a United States
9 attorney, or a court in the course of a civil investigation or
10 a civil judicial proceeding under the state or federal
11 racketeer influenced and corrupt organization act or under
12 chapter 896.

13 (9)(a) Notwithstanding other provisions of this
14 section, the department shall, subject to paragraph (c) and to
15 the safeguards and limitations of paragraphs (b) and (d),
16 disclose to the governing body of a municipality, a county, or
17 a subcounty district levying a local option tax, or any state
18 tax which is distributed to units of local government based
19 upon place of collection, which the department is responsible
20 for administering, names and addresses only of the taxpayers
21 granted a certificate of registration pursuant to s. 212.18(3)
22 who reside within or adjacent to the taxing boundaries of such
23 municipality, county, or subcounty district when sufficient
24 information is supplied by the municipality, the county, or
25 subcounty district as the department by rule may prescribe,
26 provided such governing bodies are following s. 212.18(3)
27 relative to the denial of an occupational license after the
28 department cancels a dealer's sales tax certificate of
29 registration.

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1 (b) Such information shall be disclosed only if the
2 department receives an authenticated copy of a resolution
3 adopted by the governing body requesting it.

4 (c) After receipt of such information, the governing
5 body and its officers and employees are subject to the same
6 requirements of confidentiality and the same penalties for
7 violating confidentiality as the department and its employees.
8 The resolution requesting such information shall provide
9 assurance that the governing body and its officers and
10 employees are aware of those requirements and of the penalties
11 for their violation of such requirements, and the resolution
12 shall describe the measures that will be put into effect to
13 ensure such confidentiality. The officer of the department
14 who is authorized to receive, consider, and act upon such
15 requests shall, if satisfied that the assurances in the
16 resolution are adequate to assure confidentiality, grant the
17 request.

18 (d) Nothing in this subsection authorizes disclosure
19 of any information prohibited by federal law from being
20 disclosed.

21 (10) Notwithstanding any other provision of this
22 section, with respect to a request for verification of a
23 certificate of registration issued pursuant to s. 212.18 to a
24 specified dealer or taxpayer or with respect to a request by a
25 law enforcement officer for verification of a certificate of
26 registration issued pursuant to s. 538.09 to a specified
27 secondhand dealer or pursuant to s. 538.25 to a specified
28 secondary metals recycler, the department may disclose whether
29 the specified person holds a valid certificate or whether a
30 specified certificate number is valid or whether a specified
31 certificate number has been canceled or is inactive or invalid

1 and the name of the holder of the certificate. This
2 subsection shall not be construed to create a duty to request
3 verification of any certificate of registration.

4 (11) The department may provide to a United States
5 Trustee, or his or her designee, for any United States
6 Bankruptcy Court, exclusively for official purposes in
7 connection with administering a bankruptcy estate, information
8 relating to payment or nonpayment of taxes imposed by any
9 revenue law of this state by a trustee, debtor, or debtor in
10 possession, including any amount paid or due.

11 (12) The department may disclose certain state sales
12 tax information relating to the cancellation or revocation of
13 sales and use tax certificates of registration for the failure
14 to collect and remit sales tax. This information is limited to
15 the sales tax certificate number, trade name, owner's name,
16 business location address, and the reason for the cancellation
17 or revocation.

18 (13) Notwithstanding the provisions of s. 896.102(2),
19 the department may allow full access to the information and
20 documents required to be filed with it under s. 896.102(1) to
21 federal, state, and local law enforcement and prosecutorial
22 agencies, and to the Department of Banking and Finance, and
23 any of those agencies may use the information and documents in
24 any civil or criminal investigation and in any court
25 proceedings.

26 (14)(a) Notwithstanding any other provision of this
27 section, the department shall, subject to the safeguards
28 specified in paragraph (c), disclose to the Division of
29 Corporations of the Department of State the name, address,
30 federal employer identification number, and duration of tax
31 filings with this state of all corporate or partnership

1 entities which are not on file or have a dissolved status with
2 the Division of Corporations and which have filed tax returns
3 pursuant to either chapter 199 or chapter 220.

4 (b) The Division of Corporations shall use such
5 information only in the pursuit of its official duties
6 relative to nonqualified foreign or dissolved corporations in
7 the recovery of fees and penalties due and owing the state.

8 (c) All information exchanged between the Division of
9 Corporations and the department shall be subject to the same
10 requirements of confidentiality as the Department of Revenue.

11 (15) The department may disclose confidential taxpayer
12 information contained in returns, reports, accounts, or
13 declarations filed with the department by persons subject to
14 any state or local tax to the child support enforcement
15 program, to assist in the location of parents who owe or
16 potentially owe a duty of support pursuant to Title IV-D of
17 the Social Security Act, their assets, their income, and their
18 employer, and to the Department of Children and Family
19 Services for the purpose of diligent search activities
20 pursuant to chapter 39. Nothing in this subsection authorizes
21 the disclosure of information if such disclosure is prohibited
22 by federal law. Employees of the child support enforcement
23 program and of the Department of Children and Family Services
24 are bound by the same requirements of confidentiality and the
25 same penalties for violation of the requirements as the
26 department.

27 (16) The department may provide to the person against
28 whom transferee liability is being asserted pursuant to s.
29 212.10(1) information relating to the basis of the claim.

30 (17) The department may disclose to a person entitled
31 to compensation pursuant to s. 213.30 the amount of any tax,

1 penalty, or interest collected as a result of information
2 furnished by such person.

3 Section 2. The Legislature finds that it is a public
4 necessity that any information or material contained in
5 returns, reports, accounts, or declarations received by the
6 Department of Revenue pursuant to chapter 202, Florida
7 Statutes, be exempt from public records requirements. The
8 disclosure of such information or material would adversely
9 affect the business interests of communications service
10 companies providing the information by harming them in the
11 marketplace and compromising the security of the
12 communications network. Further, disclosure of such
13 information or material would impair competition in the
14 communications industry. Disclosure of data which reveals the
15 business interests of communications service companies creates
16 a competitive disadvantage and an unfair advantage for its
17 competitors. Competitors can use such information to impair
18 full and fair competition and impede competition in the
19 communications marketplace to the disadvantage of the
20 consumers of communications services. Thus, the public and
21 private harm in disclosing this information significantly
22 outweighs any public benefit derived from disclosure, and the
23 public's ability to scrutinize or monitor agency action is not
24 diminished by nondisclosure of this information.

25 Section 3. This act shall take effect October 1, 2001,
26 if Committee Substitute for Senate Bill 1878 or similar
27 legislation nullifying the repeal of chapter 202, Florida
28 Statutes, is adopted in the same legislative session or an
29 extension thereof and takes effect.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 1836

This committee substitute specifies that this bill shall take effect October 1, 2002, contingent on the adoption of CS/SB 1878 or similar legislation.